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21 [Additional counsel listed on signature page]

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA  
24 SAN JOSE DIVISION

25 IN RE: HIGH-TECH EMPLOYEE  
26 ANTITRUST LITIGATION

27 THIS DOCUMENT RELATES TO:  
28 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**CLASS ACTION**

**DECLARATION OF KELLY M. DERMODY  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 I, Kelly M. Dermody, declare:

2 1. I am an attorney licensed to practice in the Northern District of California. I am a  
3 partner at the firm of Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”), Co-Lead Counsel for  
4 Plaintiffs Mark Fichtner, Siddharth Hariharan, and Daniel Stover and the Class. I have personal  
5 knowledge of the facts set forth herein and could competently testify to them if called as a  
6 witness.

7 2. I am a member in good standing of the bar of the State of California; the United  
8 States District Court for the Northern District of California; the United States District Court for  
9 the Central District of California; the United States District Court for the Eastern District of  
10 California; the United States Courts of Appeals for the First, Second, Third, Fourth, Sixth,  
11 Seventh, and Ninth Circuits; and the United States Supreme Court.

12 **Fairness, Adequacy, and Reasonableness of the Settlement**

13 3. The record in this case is well developed, including the completion of extensive  
14 fact and expert discovery, both in relation to Plaintiffs’ motions for class certification and the  
15 merits of the case; the briefing and argument of Plaintiffs’ motion and supplemental motion for  
16 class certification, and the ultimate decision by the Court to certify the class; the briefing and  
17 denial of Defendants’ motions to dismiss, individual motions for summary judgment, joint motion  
18 for summary judgment, motion to exclude testimony of Matthew Marx, and (in part) the motion  
19 to exclude testimony of Dr. Edward E. Leamer; and briefing on the parties’ motions *in limine* and  
20 disputes regarding the evidence to be presented at trial.

21 4. After the Court lifted a discovery stay in January 2012, the parties completed  
22 broad, extensive, and thorough discovery related to both class certification and the merits. The  
23 parties took 107 depositions. Plaintiffs took 93 depositions of Defendant witnesses, and served  
24 75 document requests, for which Defendants collectively produced over 325,000 documents (over  
25 3.2 million pages). Plaintiffs also served 28 subpoenas on third parties, negotiated with those  
26 third parties, and received 8,809 pages of documents from them. Defendants took the depositions  
27 of named Plaintiffs, and propounded document requests, in response to which Plaintiffs produced  
28 over 31,000 pages. Defendants also served 34 subpoenas on third parties, including the then-

1 current and former employers of the Plaintiffs. Defendants' subpoenas resulted in 1,834 pages of  
2 documents produced, which Plaintiffs' counsel also reviewed.

3 5. With expert assistance, Plaintiffs' counsel analyzed vast amounts of computerized  
4 employee compensation and recruiting data, including approximately 80,000 files of  
5 employment-related data exceeding 50 gigabytes. Plaintiffs' counsel retained four experts and  
6 numerous consultants to review and analyze this data, documents produced in the action,  
7 deposition testimony, and other relevant facts; apply their relevant expertise to those facts; and  
8 form opinions regarding a range of assigned tasks. Those experts included Dr. Edward Leamer of  
9 the University of California, Los Angeles, who provided six expert reports consisting of 433  
10 pages of analysis. Defendants took four depositions of Dr. Leamer regarding his opinions.  
11 Plaintiffs retained Dr. Kevin Hallock of Cornell University, who provided two expert reports  
12 consisting of 232 pages of analysis. Defendants took two depositions of Dr. Hallock. Plaintiffs  
13 also retained Dr. Alan Manning of the London School of Economics, who provided one expert  
14 report, and Dr. Matthew Marx of the Sloan School of Management at the Massachusetts Institute  
15 of Technology, who provided two expert reports. Defendants also deposed Dr. Manning and Dr.  
16 Marx.

17 6. Plaintiffs' counsel and their experts also reviewed, deposed, and analyzed the  
18 expert analysis Defendants submitted. Defendants retained seven experts, who collectively  
19 submitted a total of 1,733 pages of expert reports, including detailed and extensive quantitative  
20 analysis. Plaintiffs' experts assessed these reports and provided responses to them. Plaintiffs'  
21 counsel took depositions of every defense expert, including multiple depositions for some  
22 witnesses.

23 7. Fact and expert discovery, which is now complete, has been thorough, and it  
24 required the parties to engage in numerous and extensive meetings and conferences concerning  
25 the scope of discovery and the analysis regarding the various electronic data, policy documents,  
26 and other files produced.

27 8. In addition to the discovery and class certification efforts described above, as the  
28 case neared trial the parties engaged in substantial motion practice and preparations for trial.

1 Plaintiffs and Defendants litigated intensively motions for summary judgment, motions to  
2 exclude expert evidence and motions *in limine*, along with Plaintiffs' motion for the application  
3 of the *per se* standard and their motion to compel the production of a confidential document.  
4 Plaintiffs and Defendants also engaged in the exchange of extensive pretrial disclosures and  
5 conferences regarding trial exhibits, witnesses, the joint pretrial statement, and many other issues.  
6 With respect to hundreds of items of documentary evidence, the parties hotly disputed the  
7 application of the business records exception to the hearsay rule. At the time of settlement,  
8 Plaintiffs had served numerous notices of deposition on corporate witnesses to authenticate  
9 business records to which Defendants refused to stipulate. In addition, the parties challenged the  
10 scope of each other's proposed witness lists.

11 9. Plaintiffs' counsel also prepared extensively for trial by retaining a highly-  
12 experienced jury consultant to assist with jury preparation and selection.

13 10. Plaintiffs and the Settling Defendants engaged in extensive mediated negotiations  
14 to resolve the dispute. Initially, mediation was conducted by David Rotman. After a number of  
15 sessions, those efforts were unsuccessful. Subsequently, the parties retained the services of  
16 experienced mediator Hon. Layn Phillips (retired). Plaintiffs and Settling Defendants conducted  
17 a day-long mediation supervised by Judge Phillips on February 17, 2014. After two months of  
18 negotiations, Plaintiffs executed a Memorandum of Understanding with all Settling Defendants  
19 on April 24, 2014. Afterward, Plaintiffs and the Settling Defendants exchanged several drafts of  
20 the final Settlement Agreement and related settlement documents before the parties came to final  
21 agreement as to each.

22 11. At all times during the negotiation process, counsel for Plaintiffs and the Settling  
23 Defendants bargained vigorously and at arm's length on behalf of their clients. There was no  
24 discussion of attorneys' fees prior to negotiating the class relief. There are no commitments  
25 between the parties beyond what is set forth in the settlement agreement. At all times during the  
26 negotiation process, Class Counsel and the Settling Defendants bargained vigorously on behalf of  
27 their clients.  
28

1           12.     At this advanced stage of litigation, Plaintiffs have a keen understanding of the  
2 factual and legal issues involved in this case as well as the relative strengths and weaknesses of  
3 Plaintiffs' claims. Plaintiffs are well aware of the risks posed to each side by proceeding to trial  
4 in this litigation.

5           13.     Here, Class Counsel believe this Settlement is in the best interests of the Class and  
6 is fully informed by Class Counsel's analysis of the evidence, case law, and risks at trial. The  
7 proposed monetary recovery would be among the largest recoveries for employees in any class  
8 litigation in history.

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10                   **The Named Plaintiffs Have Expended Substantial Time and Effort in**  
11                   **Assisting Class Counsel with the Prosecution of the Class's Claims**

12           14.     The Named Plaintiffs expended substantial time and effort assisting Class Counsel  
13 with the prosecution of the Class's claims. They have responded to extensive document requests,  
14 including requests regarding their lifetime employment history well beyond their experience with  
15 Defendants here and without regard to time period (and across all variety of physical and  
16 electronic locations), and worked with Class Counsel regarding difficult issues with third party  
17 electronic databases. The Named Plaintiffs produced over 31,000 pages of documents to  
18 Defendants, answered Defendants' interrogatories, and gave full-day depositions. They have also  
19 attended hearings and the mediation. The Named Plaintiffs have all devoted many hours  
20 consulting with Class counsel regarding fact development and strategy.

21                   **Incurred and Expected Litigation Costs**

22           15.     Based on the records of LCHB and reports provided to LCHB by the other firms  
23 representing Plaintiffs and the Class, to date the incurred and unreimbursed costs total  
24 approximately \$1,150,000. I estimate additional costs from this date to final approval will not  
25 exceed \$50,000. Each firm will provide more detailed cost information in connection with  
26 Plaintiffs' request for final approval.

27                   **Attachments**

28           16.     Attached as Exhibit 1 is a true and correct copy of the Settlement Agreement  
reached with Adobe, Inc., Apple, Inc., Google, Inc., and Intel Corporation.

1           17.     Attached as Exhibit 2 is a true and correct copy of the October 8, 2004 Order  
2 issued in *Beck, et al. v. Boeing Co.*, Case No. 00-CV-0301-MJP, Dkt. 1067 at 4 (W.D. Wash.)  
3 (awarding \$100,000 service payments to each of the named plaintiffs).

4           18.     Attached as Exhibit 3 is a true and correct copy of the *Ivax Corp. v. Aztec*  
5 *Peroxides, LLC, et al.*, Case No. 1:02CV00593 (D.D.C. Aug. 24, 2005) (awarding service  
6 payments to each class representative of \$100,000 each).

7           19.     Attached as Exhibit 4 is a true and correct copy of the completed special verdict  
8 form issued in *In re: TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. MD 07-1827-SI (N.D.  
9 Cal.).

10          20.     Attached as Exhibit 5 is a true and correct copy of the completed special verdict  
11 form issued in *Best Buy Co., Inc. v. AU Optronics Corp., et al.*, Case No. 10-CV-4572-SI (N.D.  
12 Cal.) and *Best Buy Co., Inc. v. Toshiba Corp., et al.*, Case No. 12-CV-4114-SI (N.D. Cal.)

13          21.     Attached as Exhibit 6 is a true and correct copy of the completed special verdict  
14 form issued in *In re Tableware Antitrust Litig.*, Case No. C-04-3514-VRW (N.D. Cal.).  
15  
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17                                 \*         \*         \*

1 I declare under penalty of perjury under the laws of the United States and the State of  
2 California that the foregoing is true and correct to the best of my knowledge and that this  
3 declaration was executed in San Francisco, California on May 22, 2014.

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5 /s/ Kelly M. Dermody  
6 Kelly M. Dermody  
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